

Now, on the eve of a hearing focused on the Government's failure once again to produce documents explicitly referenced in the Source Selection Decision, the Government asks this Court to take some undefined action to delay the current proceedings for some undetermined period of time so the Agency can take some unspecified corrective action. While Plaintiffs have no desire to waste further time, resources, and money fighting over an issue that could become moot if the Agency intends to take prompt and meaningful corrective action, we have been down this road before. Accordingly, Plaintiffs do not believe further delay is warranted at this point without a firm commitment from the Agency that:

- It will announce the specific terms of its proposed corrective action by a certain, specified date and those terms will be shared with the Court and the parties;
- A firm deadline will be agreed upon for the completion of the announced corrective action;
- The Agency will designate a responsible Department of Education official to be present at a near-term status hearing to ensure the corrective action stays on track and to ensure Agency accountability if it does not; and
- The current Preliminary Injunction will stay in place through the entirety of the corrective action and any subsequent protests.

Without these protections, Plaintiffs fear a delay at this time will lead to more litigation and a less efficient process in the future.

While Plaintiffs, generally speaking, are not against a stay to prevent unnecessary exertion of time and resources on this litigation, as noted above, the Government's Notice does not provide the specificity necessary to reasonably evaluate whether a stay is appropriate at this time. The Notice, filed on the eve of Friday's hearing, provides no indication regarding what the possible outcome of the Government's "assessment" might be, nor how long such an assessment might take. When it last announced corrective action in May 2017, it took approximately *eight months*

for any decision to be made, and this decision was prompted only by an Order from this Court requiring that the Agency complete corrective action by a certain date.

The first Complaint in this matter was filed on February 9, 2018. The Government has had over a month to review its procurement record in the context of the Complaints that have been filed. If indeed “All options remain on the table” as the Government states in its Notice, then the Government has not made any progress in addressing this matter. Until the Government puts forth a credible corrective action plan backed by leadership personnel in the Department of Education who are committed to executing that plan on a set timeline, a stay of the litigation for an indeterminate amount of time based on the Government’s Notice will further delay the ultimate resolution of this matter. In the absence of receiving these details from the Government, Plaintiffs are opposed to any stay of proceedings at this time.

Respectfully submitted,

Dated: March 20, 2018

SHEPPARD MULLIN RICHTER & HAMPTON
LLP

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on all parties electronically via the CM/ECF system on this 20th day of March 2018.

/s/ Jonathan S. Aronie

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